Supreme Court, U.S.
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No. 88-1962

In the Supreme Court of the United States

OCTOBER TERM, 1989

EAST TEXAS STEEL FACILITIES, INC., PETITIONER

v.

MANUEL LUJAN, JR., SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

KENNETH W. STARR
Solicitor General
RICHARD B. STEWART
Assistant Attorney General
ROBERT KLARQUIST
JEAN ANNE KINGREY
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether petitioner's contract rights were impaired when, pursuant to the provisions of the Federal Coal Leasing Amendments Act of 1976, Pub. L. No. 94-377, 90 Stat. 1083, the Secretary of the Interior gave notice of his intent to adjust the terms and conditions of existing federal coal leases prior to the expiration of the 20-year anniversary dates of the leases, but did not specify the new terms or implement them until shortly after the anniversary dates had passed.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is unreported. The opinion of the district court (Pet. App. 5a-12a) is unreported. The opinions of the Interior Board of Land Appeals (Pet. App. 13a-20a, 21a-37a) are reported at 65 I.B.L.A. 147 and 71 I.B.L.A. 92.

JURISDICTION

The court of appeals entered its judgment on November 23, 1988. A petition for rehearing was denied on February 17, 1989. Pet. App. 2a-3a. The petition for a writ of certiorari was filed on May 17, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Department of the Interior, Bureau of Land Management (BLM), issued five coal leases to Lone Star Steel Company (Company) during the period between June 1959 and May 1962 pursuant to the Mineral Lands Leasing Act of 1920 (MLLA), ch. 85, 41 Stat. 437. Section 7 (41 Stat. 439-440) of that Act then provided that leases were for "indeterminate periods," but that "at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods." 30 U.S.C. 207 (1958). The terms of the Company's leases reflect this statutory provision. Under each lease, the United States expressly reserved "[t]he right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period." Pet. App. 5a, 128a, 137a, 146a, 150a-153a (assignment agreement), 159a.

In 1976, Congress enacted the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Pub. L. No. 94-377, 90 Stat. 1083. Section 6 (90 Stat. 1087, codified at 30 U.S.C. 207 (1982)) of the FCLAA amended Section 7 of the MLLA in several respects. Notably, for example, the FCLAA raised the floor on royalty rates. The Secretary must now "require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." *Ibid.* Under the FCLAA, "rentals and royalties and other terms

and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended." *Ibid.*

2. At the time each lease was issued, the Department of the Interior regulations controlling issuance of leases under the MLLA provided that notice of proposed readjustments be given, whenever feasible, before the expiration of each 20-year term. 43 C.F.R. 193.16 (1954). The regulations were amended after passage of the FCLAA to require notification of the intent to readjust prior to the anniversary date. 43 C.F.R. 3451.1(d) (1979); see also 43 C.F.R. 3522.2-1 (1978) (effective before July 19, 1979) (requiring notice before expiration of 20-year period where feasible). Consistent with the notice requirements of the regulations, the BLM notified the Company in advance of the 20-year anniversary of each lease that the lease would be readjusted.* Pet. App. 49a-56a. The readjusted terms and conditions were sent to the Company in the case of four of the leases after the anniversary dates of the leases. See Pet. App. 9a. The readjusted terms of each lease incorporated provisions of Section 6 of the FCLAA. Pet. App. 57a-122a.

The Company filed objections to each readjustment. In each instance, the BLM upheld the readjustment. Pet. App. 10a. The Company then appealed to the Interior Board of Land Appeals (IBLA). The IBLA issued its opin-

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* As found by the district court (Pet. App. 9a), the relevant dates for each lease are as follows:

Lease No.	20-yr. Anniversary	Notice of Intent To Readjust
NM 059992 OK	06-01-79	02-09-79
NM 050405 OK	12-01-79	02-09-79
NM 050406 OK	12-01-79	02-09-79
NM 059996 OK	04-01-80	11-19-79
BLM-C-018820 OK	05-01-82	10-30-81

ion on June 29, 1982, *Lone Star Steel Co.*, 65 I.B.L.A. 147, affirming the BLM readjustment. Pet. App. 13a-37a. The Company appealed the IBLA decisions to the United States District Court for the Eastern District of Oklahoma. On June 30, 1986, the district court affirmed the propriety of the readjustment. Pet. App. 5a-12a. The Company appealed.

3. The court of appeals affirmed. Pet. App. 1a. It rejected the Company's arguments (1) that the Department of the Interior had waived its right to readjust the leases by providing only notice of the intent to readjust rather than the actual terms of the readjustment prior to the 20-year anniversary of the leases and (2) that the FCLAA does not apply to pre-FCLAA leases at post-FCLAA readjustments. The court found that the Company had failed to distinguish the issues in this matter from the issues raised in *FMC Wyoming Corp.* v. *Hodel,* 816 F.2d 496 (10th Cir. 1987), cert. denied, 108 S. Ct. 772 (1988), and *Coastal States Energy Co.* v. *Hodel,* 816 F.2d 502 (10th Cir. 1987).

ARGUMENT

The court of appeals correctly determined that the issues raised here are substantially similar to those resolved in *FMC Wyoming Corp.* v. *Hodel, supra.* As was the case there, the decision is correct and does not conflict with any decision of this Court or of any other court of appeals. Accordingly, review by this Court is similarly not warranted here.

1. Contrary to petitioner's assertion (Pet. 15, 17-19), neither the government's actions here nor the court of appeals' decision impairs the Company's contract rights. Section 7 of the MLLA provided that a lease should last an indeterminate period at a royalty rate fixed by the Secretary of the Interior, subject to the condition that at the end of

each 20-year period such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the expiration of such periods. The regulations of the Department of the Interior and the Company's leases echoed this provision, expressly reserving to the Secretary the right to readjust the terms and conditions of each lease at its 20-year anniversary. "Notice of the proposed readjustments [was to] be given, whenever feasible, before the expiration of each such twenty-year period." 43 C.F.R. 193.16 (1954); see Pet. App. 128a, 137a, 146a, 159a. Here, the BLM gave notice of its intent to readjust the terms and conditions of the leases in every case before the anniversary date. See note*, *supra*. The court of appeals therefore correctly determined that there was no breach of contract.

Petitioner's assertion (Pet. 15-17) that the leases and the regulations required that the proposed terms had to be provided by the expiration of the 20-year term is without merit. The plain language of 43 C.F.R. 193.16 (1954) provided only that notice of proposed readjustments would be given "whenever feasible, before the expiration of each such twenty-year period." Thus, "notice of an intent to readjust terms and conditions of a coal lease given a coal company on or shortly before the 20-year anniversary date preserves the Department's right under the MLLA and the lease provisions to readjust the terms within a reasonable time thereafter." *FMC Wyoming Corp.*, 816 F.2d at 500; Pet. App. 174a; see also 816 F.2d at 500 n.8; Pet. App. 174 n.8. The government thus did not retroactively change the terms of its contracts with petitioner.

2. It is well settled that Congress may, as it did in petitioner's leases, reserve to itself the authority to amend the law and thus the terms by which continuation of the leases would be offered without offending the Takings Clause of the Fifth Amendment. See *Bowen* v. *Public Agencies Op-*

posed to Social Security Entrapment, 477 U.S. 41, 55 (1986); cf. *Sinking-Fund Cases,* 99 U.S. 700, 720 (1879). Nor does the right to readjust the terms of a lease make the contract illusory, as asserted by the petitioner. Pet. 17. Readjustments are imposed only at the end of the lease period. During the period between readjustments, the provisions of the leases are binding.

3. Finally, it is clear that Congress intended the requirements of the FCLLA to apply to pre-FCLLA coal leases upon post-FCLLA readjustment of their terms. First, the plain language chosen by Congress dictates that result. Section 7 of the MLLA provides that the Secretary may readjust the terms and conditions of leases at their 20-year anniversary dates as he or she may determine, "unless otherwise provided by law at the expiration of such periods." In 1976, Congress amended the MLLA in the FCLLA so that new requirements were "otherwise provided by law at the expiration" of the leases at issue here. See *FMC Wyoming Corp.,* 816 F.2d at 501; Pet. App. 175a-176a.

Second, the legislative history makes clear that Congress intended that the terms of the FCLAA were to be applied at the time of readjustment. Representative Mink addressed that question during the legislative debates: "The 533 existing Federal leases would be unaffected by the bill except to the extent its provisions are made applicable upon the periodic ten year adjustment of the lease terms, or upon the inclusion of an existing lease in a logical mining unit." See 122 Cong. Rec. 489 (1976); *id.* at 25,464 (remarks of Rep. Baucus); see also S. Rep. No. 1169, 95th Cong., 2d Sess. 7 (1978) ("All leases would of course be subject to the provisions of the 1976 amendments at the expiration of their original lease term[s]."); *FMC Wyoming Corp.,* 816 F.2d at 501 n.11; Pet. App. 176a n.11.

The court of appeals in *FMC Wyoming Corp.* v. *Hodel, supra,* correctly held the FCLLA applicable to pre-FCLAA leases such as petitioner's leases, and this Court denied certiorari. Petitioner's claim has not been, and cannot be, distinguished from that rejected in *FMC Wyoming Corp.*

CONCLUSION

The petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General
RICHARD B. STEWART
Assistant Attorney General
ROBERT KLARQUIST
JEAN ANNE KINGREY
Attorneys

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